

No. 12493

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United States  
Court of Appeals  
for the Ninth Circuit.

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J. GORDON TURNBULL, SVERNDRUP AND  
PARCEL and UNITED STATES FIDEL-  
ITY AND GUARANTY COMPANY,

Appellants,

vs.

ALBERT J. CYR, Deputy Commissioner for the  
Thirteenth Compensation District of the Bu-  
reau of Employees' Compensation, FEDERAL  
SECURITY AGENCY and LOIS G. M.  
ROSS, alleged widow of Kenneth R. Ross, and  
JOHN CARY ROSS, a minor child,

Appellees.

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SUPPLEMENTAL  
Transcript of Record

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Appeal from the United States District Court,  
Northern District of California,  
Southern Division.

FILED  
JUN 11 1951  
CLERK



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# INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

|   | PAGE |
|---|------|
| Certificate of Clerk to Record on Appeal.....                     | 70   |
| Designation of Contents of Record on Appeal<br>Under Rule 75..... | 69   |
| Final Judgment .....  | 68   |
| Notice of Appeal.....   | 69   |
| Opinion .....   | 65   |
| Stipulation .....   | 66   |



In the United States Court of Appeals  
for the Ninth Circuit

No. 12,493

J. GORDON TURNBULL, SVERNDRUP and  
PARCEL and UNITED STATES FIDEL-  
ITY AND GUARANTY COMPANY,

Appellants.

vs.

ALBERT J. CYR, Deputy Commissioner for the  
Thirteenth Compensation District of the Bu-  
reau of Employees' Compensation, FEDERAL  
SECURITY AGENCY, LOIS G. M. ROSS  
and JOHN CARY ROSS, a Minor Child,

Appellees.

Appeal From the United States District Court for  
the Northern District of California, Southern  
Division.

Aug. 15, 1950

Before MATHEWS, STEPHENS and ORR,  
Circuit Judges.

PER CURIAM OPINION

This appeal is from an order which granted a  
motion to dismiss a complaint, but did not dismiss  
it. Such an order is not a final decision, within the  
meaning of 28 U.S.C.A. § 1291, and is not appeal-

able. *Prickett v. Consolidated Liquidating Corp.*, 9 Cir., 180 F. 2d 8. See, also, *City and County of San Francisco v. McLaughlin*, 9 Cir., 9 F. 2d 390; *Wright v. Gibson*, 9 Cir., 128 F. 2d 865; *Tee-Hit-Ton-Tribe of Tlingit Indians v. Olson*, 9 Cir., 144 F. 2d 347; *Peoples Bank v. Federal Reserve Bank*, 9 Cir., 149 F. 2d 850; *Cashion v. Bunn*, 9 Cir., 149 F. 2d 969. The appeal is, therefore, dismissed. Mandate to issue forthwith.

[Endorsed]: Per Curiam Opinion. Filed Aug. 15, 1950. Paul P. O'Brien, Clerk.

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[Title of Court of Appeals and Cause.]

### STIPULATION

It is hereby stipulated by and between counsel for appellants and counsel for appellee that the clerk may have prepared, at the expense of appellants, a printed supplemental transcript of record consisting of the judgment of dismissal entered herein on September 13, 1950, and the notice of appeal filed on September 13, 1950; that the appeal may be considered upon the record on the appeal heretofore taken as so supplemented, and the briefs filed on the said appeal so previously taken; and that the case may be restored to the calendar for argument immediately upon the receipt of the supplemental transcript of record by the clerk from the printer.



Dated: September 26, 1950.

LEONARD, HANNA &  
BROPHY,

Attorneys for Appellants,

By /s/ IVAN A. SCHWAB.

FRANK J. HENNESSY,

United States Attorney,

By /s/ MACKLIN FLEMING,

Assistant United States

Attorney,

Attorneys for Appellee Cyr.

[Endorsed]: Filed Sept. 26, 1950.

In the United States District Court for the North-  
ern District of California, Southern Division  
No. 28237-H

J. GORDON TURNBULL and SVERNDRUP  
and PARCEL, and U. S. FIDELITY AND  
GUARANTY COMPANY,

Complainants,

vs.

ALBERT J. CYR, Deputy Commissioner for the  
Thirteenth Compensation District of the Bu-  
reau of Employees' Compensation,

Respondent.

### FINAL JUDGMENT

This cause having been submitted for decision, on the motion of respondent Albert J. Cyr, Deputy Commissioner, to dismiss the bill of complaint, and the Court having determined that the compensation order filed by the respondent, Albert J. Cyr, on the 8th day of July, 1948, is in accordance with law, and having on the 28th day of December, 1949, entered its order granting respondent's motion to dismiss; it is

Ordered, Adjudged, and Decreed that the complaint be dismissed and that respondent recover his costs.

Dated: September 12, 1950.

/s/ DAL M. LEMMON,  
District Judge.

[Endorsed]: Filed Sept. 12, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that J. Gordon Turnbull and Sverndrup and Parcel and United States Fidelity and Guaranty Company, complainants in the above-entitled action, hereby appeal to the United States Court of Appeals for the Ninth Judicial Circuit from the final judgment dismissing the complaint herein, entered on the 12th day of September, 1950, and from the whole of said judgment and each and every part thereof.

Dated at San Francisco this 13th day of September, 1950.

LEONARD, HANNA &  
BROPHY,

Attorneys for Complainants.

/s/ EDMUND D. LEONARD,

/s/ IVAN A. SCHWAB.

[Endorsed]: Filed Sept. 13, 1950.

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL UNDER RULE 75

Complainants hereby request that a supplemental record on appeal be prepared consisting of the following:

Final Judgment dated September 12, 1950.

Notice of Appeal dated September 13, 1950.

Dated at San Francisco this 13th day of September, 1950.

LEONARD, HANNA &  
BROPHY,

Attorneys for Complainants.

/s/ EDMUND D. LEONARD,

/s/ IVAN A. SCHWAB.

[Endorsed]: Filed Sept. 13, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellants, to wit:

Final Judgment.

Notice of Appeal.

Designation of Contents of Record on Appeal,  
Under Rule 75.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 19th day of September, A.D. 1950.

C. W. CALBREATH,  
Clerk,

[Seal] By /s/ M. E. VAN BUREN,  
Deputy Clerk.

[Endorsed]: No. 12493. United States Court of Appeals for the Ninth Circuit. J. Gordon Turnbull and Sverndrup and Parcel, and United States Fidelity and Guaranty Company, Appellants, vs. Albert J. Cyr, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 19, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

